

Establishing Your Domicile: Home is Much More Complicated Than Simply Where Your Heart Is

Part 1: Service-members

by Yosefi Seltzer, Legal Assistance Attorney

Establishing and maintaining a domicile has traditionally been one of the greatest challenges for service-members and their civilian spouses. Too often, service-members and spouses rely on mistaken guidance offered by other service-members, state Department of Motor Vehicle employees, car salesmen or realtors. When I ask service-members and their spouses the question: "Which State do you call home?" the answer I often receive goes something like this: "I vote in Virginia, my driver's license is from Kentucky, my vehicle is registered in Maryland, I own a house in North Carolina, but for taxes, I am a Florida resident."

The decision as to which domicile to maintain has major implications, most notably: state income tax liability, vehicle registration and emissions regulations, Court jurisdiction, in-state college admissions and tuition rates for yourself or your children, estate planning and voting rights. Because of the significant legal and financial implications of maintaining a domicile, the decision is serious and once chosen, it must be carefully preserved. This article will deal specifically with Service-members on Active Duty. Part 2 will discuss implications for the spouses of Service-members.

You acquire "Domicile" or "Legal Residence" when you are born, taking on the domicile/legal residence of the State in which you live. Domicile/Legal Residence does not change simply because the service-member enters military service and is stationed in different state. When you enter Active Duty military service (reservists and national guard service-members retain domicile/legal residence of where they physically reside so long as they are not mobilized or on Active Duty orders), you may retain a domicile/legal residence of the state in which you entered Active Duty service regardless of where you are stationed throughout your Active Duty career. It is the place to which the service-member intends to return to after the end of Active Duty military service. If you retire from Active Duty, you become a resident of the state in which you physically live for six months or more. Thus, if you retire from Active Duty in May and remain in Maryland the rest of the year, the portion of time you were on Active Duty you can remain a Domiciliary of your previous state, but you become a Maryland Domiciliary once you become a civilian. You may choose to change your domicile/legal residence from your service-entry state to a state in which you are stationed, but think carefully before doing so: attempting to reverse the change, back to the service-entry state, may be difficult to defend, particularly if you no longer maintain a residence in the service-entry state and are not physically living there when you attempt to make the change.

The primary indicators of Domicile/Legal Residence are where the service-member votes, pays state taxes, maintains a driver's license and vehicle registration. Changing any of these may have serious legal and financial consequences: if you establish ties in Maryland through registering a vehicle, voting or getting a driver's license, you are giving the State of Maryland the opportunity to argue that you have made conscious steps to establish Maryland as your domicile because you are taking benefits from Maryland and therefore should pay Maryland state income taxes on military pay. It could also disqualify you or your children from securing in-state college admissions or tuition rates from your true domicile. With most states facing budget shortfalls, state departments of revenue are expected to become more aggressive at comparing their voter registration, driver's license and vehicle registration rolls with state

income tax records in an attempt to identify individuals who have taken benefits from Maryland without paying Maryland income taxes.

So how do you preserve your Domicile/Legal Residence? **The most effective way to avoid any problems is to be consistent with your voter registration, vehicle registration and driver's license by claiming all from your state of domicile/legal residence.** Voting is considered the most important indicator of intent to establish and maintain domicile/legal residency in most states. While voting "absentee ballot" (by mail) may be inconvenient, you should make the effort if your domicile/legal residence is not the state in which you are stationed and physically live. Moreover, if you purchase a home in Maryland, **do not** request a Maryland homestead tax credit: if you request the property tax discount, you are indicating to Maryland that your Maryland residence is your "homestead" which implies it is your domicile. You are permitted to own multiple houses, condos and the like in multiple states, but you can only have one domicile. If you have Maryland source income (such as a service-member who has a second part-time job on evenings and weekends), be sure to file a Maryland Form 505 Non-Resident tax return, **not** a Maryland 502 or 503 Resident or Part Year Resident tax return.

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Part 2: Military Spouses

by Yosefi Seltzer, Legal Assistance Attorney

Establishing and maintaining a domicile has traditionally been one of the greatest challenges for service-members and their civilian spouses. Too often, service-members and spouses rely on mistaken guidance offered by other service-members, state Department of Motor Vehicle employees, car salesmen or realtors. When I ask service-members and their spouses the question: "Which State do you call home?" the answer I often receive goes something like this: "I vote in Virginia, my driver's license is from Kentucky, my vehicle is registered in Maryland, I own a house in North Carolina, but for taxes, I am a Florida resident."

The decision as to which domicile to maintain has major implications, most notably: state income tax liability, vehicle registration and emissions regulations, Court jurisdiction, in-state college admissions and tuition rates for yourself or your children, estate planning and voting rights. Because of the significant legal and financial implications of maintaining a domicile, the decision is serious and once chosen, it must be carefully preserved. This article will deal specifically with civilian spouses of Service-members on Active Duty. Part 1 dealt with Service-members on Active Duty.

You acquire "Domicile" or "Legal Residence" when you are born, taking on the domicile/legal residence of the State in which you live. Until November 11, 2009, a civilian spouse of service-member was required to become a resident of the state in which they physically resided for more than six months.

On November 11, 2009, much changed for civilian spouses. On that date, President Obama signed S.475, the Military Spouses Residency Relief Act (MSRRA), into law. The MSRRA permits civilian spouses to retain the domicile of their service-member spouse if the civilian spouse maintained domicile in that state before relocating with their service-member spouse. This means the civilian spouse would not have to necessarily become a resident of the state in which they reside with their service-member spouse simply because the service-member spouse received military orders to move there. The civilian spouse would then report their taxable income to their state of domicile for state income tax purposes, can retain their right to vote, retain their driver's license and vehicle registration in that state of domicile. If the couple got married after the military service-member relocated outside his/her state of domicile or the civilian spouse no longer has ties to the service-member's state of domicile, the civilian spouse must become a resident of where she/he physically lives for more than six months.

To clarify how this works, here are a few examples:

Scenario 1

John and Jackie Jupiter are married and live in Houston, Texas. They each have driver's licenses and registered their vehicles in Texas and are registered to vote in Texas. John enters Active Duty military service and is assigned to Fort Drum in New York forcing John and Jackie to move to New York. If Jackie and John want, they may maintain her Texas residencies. As far as Jackie, this means she would report any income she receives to Texas and can maintain her voter registration, driver's license and vehicle registration in Texas. She may choose to become a resident of New York if

she chooses by registering her vehicle there, registering to vote and securing a New York driver's license. She may not change her residency back to Texas unless she returns to Texas to live.

Scenario 2

Helen Hucklebee is an Active Duty Major in the Air Force. She is originally from California, where she was commissioned and retains her domicile (files a California tax return, driver's license, voter and vehicle registration) there, but currently is stationed at the Pentagon and lives in Virginia. She married Harry Henderson, a civilian government contractor, and moved in with him after the marriage into his house in Maryland. Major Hucklebee can retain her California domicile but Harry Henderson cannot become a California domiciliary unless he physically resides there. Harry will remain a Maryland resident so long as he lives in Maryland and then will become a resident of any state he relocates to and lives in for more than six months, even if he is living with Major Hucklebee.

Scenario 3

Lenny Lincoln is an Active Duty Sergeant in the Army. He is married to Lisa Lincoln, his high school sweetheart who he met in Midwest high school located in Peoria, Illinois where they both lived before he entered the Army. Sergeant Lincoln has been on Active Duty for twelve years and been stationed in North Carolina, Missouri and Texas although he has retained Illinois as his domicile by filing Illinois tax returns, registering to vote, registering his vehicle and maintaining an Illinois driver's license. He recently received orders to PCS from Fort Hood in Texas to move to Fort Campbell in Kentucky. Lisa has a Texas driver's license, voter and vehicle registration and reports her income to Texas. Once the Lincolns move to Kentucky, Lisa must become a Kentucky resident because she no longer has ties to Illinois. If she and her husband move to another state after Kentucky, she will be required to become a resident of that state.

Thus, the MSRRA does not permit a civilian spouse to select a domicile in any State. Domicile is established, which means that the spouse must have actually been present in the State, established it as his or her domicile, and maintained it by forming and maintaining the necessary contacts, such as registering to vote, registering vehicles and securing a driver's license.

Civilian spouses are liable for income taxes imposed by their state of domicile. They should request their employer to withhold state income taxes to that state. To ask your employer in Maryland to withhold taxes for a state other than Maryland, in accordance with the MSRRA, here are the necessary steps:

1. Show a copy of your Military Identification card.
2. Submit a completed Maryland State form MW507 to claim exemption from income tax withholding due to the MSRRA, along with a copy of the service-member's current military orders that reflect duty in Maryland.
3. Submit a statement requesting state income taxes be withheld for your state of domicile along with a State Tax form for that State or, if it does not reflect how the employee is filing (married, single or head of household), a W-4 must be submitted and State Tax Form written on top of the form.

Example of statement:

I, Alice Brooks, am a military spouse and my official State of legal residence or domicile is Colorado. I request that income taxes for Colorado be withheld from my Federal pay. This is effective January 1, 2010.

Signed,

Alice Brooks

When the civilian spouse no longer qualifies under the MSRRA, the employee should notify the payroll department in order to begin to withhold state income taxes for the state the spouse resides in. This often takes place when the service-member retires, dies or the parties divorce.

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Finally, civilian spouses should keep in mind that once they change their domicile such that it differs from the service-member, the only way to become a resident once again of the service-member's state is to physically reside there.